

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

AMERIPRIDE SERVICES, INC.,  
A Delaware Corporation,

Plaintiff,

No. CIV S-00-0113 LKK JFM

vs.

(Consolidated)

VALLEY INDUSTRIAL SERVICE, INC.,  
a former California corporation, et al.,

Defendants.

ORDER

\_\_\_\_\_  
HUHTAMAKI FOODSERVICE, INC.,

Plaintiff,

vs.

AMERIPRIDE SERVICES, INC., et al.,

Defendants.

\_\_\_\_\_  
Plaintiff Huhtamaki's motion for protective order came on for telephonic hearing on shortened time on May 2, 2006. Plaintiff Huhtamaki was represented by Stephen J. Darmody and John Nelson. Lee N. Smith appeared for defendant AmeriPride. Bob Shannon appeared for

1 Mission Linen Supply. Upon review of the motion and the documents in support and opposition,  
2 upon hearing the arguments of plaintiff and counsel and good cause appearing therefor, THE  
3 COURT FINDS AS FOLLOWS:

4 Plaintiff Huhtamaki seeks a protective order to prevent the second deposition of  
5 Mr. Robert Smith from proceeding on May 3, 2006. Counsel argues that AmeriPride had an  
6 opportunity to depose Robert Smith on October 24, 2005, and counsel and other parties would be  
7 subjected to undue burden and expense if AmeriPride is allowed to proceed.

8 On May 2, 2006, AmeriPride filed an opposition to the motion for protective  
9 order and included a cross-motion for the deposition to be held on May 3, 2006 as noticed.  
10 Although Smith was previously deposed, he was deposed only as a percipient witness.  
11 AmeriPride contends that Mission Linen Supply did not disclose it would call Robert Smith as an  
12 expert witness until six months after Mr. Smith had already been deposed. AmeriPride seeks to  
13 depose Smith in his capacity as expert witness because Smith is a former management employee  
14 and any opinion evidence offered by Smith may be used against AmeriPride.

15 Rule 30(a)(2)(B) provides for one deposition per witness absent a court order:

16 “A party must obtain leave of court, which shall be granted to the  
17 extent consistent with principles state in Rule 26(b)(2), if the  
18 person to be examined is confined in prison or if, without the  
19 written stipulation of the parties,

20 . . .

21 (B) the person to be examined already has been deposed in the  
22 case. . . .”

23 Fed. R. Civ. P. 30(a)(2)(B).

24 Because AmeriPride was not provided notice, prior to the first deposition of  
25 Robert Smith, that he would be called as an expert witness in this action, the court finds that any  
26 burden or expense in having a second deposition is outweighed by AmeriPride’s need to depose  
Mr. Smith a second time.

Good cause appearing, THE COURT ORDERS AS FOLLOWS:

1 1. Plaintiff Huhtamaki's April 28, 2006 motion for protective order is denied;

2 2. Defendant's May 2, 2006 cross-motion for deposition is granted; and

3 3. The deposition of Robert Smith shall proceed as noticed on Wednesday, May  
4 3, 2006, at 1:00 p.m. Said deposition shall not exceed two hours.

5 DATED: May 2, 2006.

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7   
8 UNITED STATES MAGISTRATE JUDGE

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